

CALIFORNIA COASTAL COMMISSION

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Staff Report:	October 22, 2003
Hearing Date:	November 5-7, 2003

W 9b**STAFF REPORT: REGULAR CALENDAR****APPLICATION NUMBER:** 5-03-091**APPLICANTS:** City of Newport Beach and The Related Companies
(On behalf of the property owner, The Irvine Company)**AGENT:** Dan Trimble, Program Administrator, City of Newport Beach**PROJECT LOCATION:** Corner of Jamboree and Pacific Coast Highway,
City of Newport Beach, Orange County

PROJECT DESCRIPTION: Development of a senior affordable housing project and passive public park on a vacant 15-acre site. The senior affordable housing project will consist of 120 units in two 3-story buildings with a community center, administrative offices, a pool/patio area and 146 parking spaces on the lower 5 acres of the site. A Wetlands Restoration/Detention Basin/Pond area will also be created on the lower portion. The park will contain a bike path, park benches and primarily native vegetation on the upper 10 acres. Approximately 38,162 cubic yards of grading (14,923 c.y. cut and 23,239 c.y. fill, including 8,316 c.y. import) is proposed for drainage, slope stabilization and site preparation. The project also involves approval of a lot line adjustment, modifying the configuration and size of each parcel.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the proposed development subject to eighteen (18) special conditions. The subject site is a vacant 15-acre property, including two small wetlands, located between the first public road and the sea (Upper Newport Bay) in the City of Newport Beach. The applicant proposes to create a public park on the upper portion of the site and a senior affordable housing project with a wetlands restoration area on the lower portion. The primary issues addressed in the staff report are wetlands fill, landform alteration, public access/parking, and water quality.

At the time of this staff report, the applicants are in agreement with the staff recommendation of approval and oppose any significant modifications to the project. However, the applicant may have concerns regarding certain special conditions.

LOCAL APPROVALS:

Newport Beach City Council approval of Use Permit No. 2003-003, Site Plan Review No. 2003-001 and Lot Line Adjustment No. 2003-011 and adoption of Mitigated Negative Declaration for Bayview Park and Senior Housing on February 25, 2003.

SUBSTANTIVE FILE DOCUMENTS:

City of Newport Beach Certified Land Use Plan (LUP); Circulation Improvement and Open Space

Agreement (CIOSA); CIOSA Program EIR prepared by ASB Planning dated 1992; Mitigated Negative Declaration prepared by Civic Solutions, Inc. dated February 25, 2003; *Preliminary Geotechnical Investigation for the Newport Senior Lower Bayview Landing, City of Newport Beach, California*, prepared by NMG Geotechnical, Inc. dated December 18, 2002 and signed by T. Wright (CEG 1342) and K. Markouizos (RCE 50312); *Supplemental Geotechnical Investigation and Review of Rough Grading Plan for Proposed Bayview Senior Affordable Housing and Park Project, City of Newport Beach* prepared by NMG Geotechnical, Inc. and signed by T. Wright (CEG 1342) and K. Markouizos (RCE 50312), dated April 22, 2003; *Phase I Cultural Resources Investigation of the Bayview Landing Project Area* prepared by McKenna et al dated July 5, 2001; *Phase 1 Environmental Site Assessment* prepared by ENVIRON dated December 13, 2001; *Wetlands Delineation and Field Biological Evaluation* prepared by Robert 'Roy' van de Hoek dated April 6, 2003; Biological letter report prepared by Keane Biological Consulting dated March 21, 2003; *Jurisdictional Delineation of the Bayview Property* letter report prepared by Glenn Lukos Associates dated April 11, 2003; *Jurisdictional Delineation of the Bayview Property* letter report prepared by Glenn Lukos Associates dated April 11, 2003 (revised May 2, 2003); *Hydric Soils Investigation* prepared by Fuscoe Engineering dated June 17, 2003; *Conceptual Restoration Plan for Degraded Artificial Wetlands Associated with Bayview Landing Affordable Senior Housing and Park* prepared by Glenn Lukos Associates, Inc. dated July 3002 [Revised August 2003]; *Wetland Determination on the Bayview Property, Conducted by the Request of the City of Newport Beach, California* prepared by Charles J Newling, Wetlands Science Applications, Inc. dated September 8, 2003.

LIST OF EXHIBITS:

1. Vicinity Map
2. Assessor's Parcel Map
3. Site/Landscaping Plan and Grading Plan (as updated Sept. 2003)
4. Elevations and Floor Plans (as originally submitted, not updated)
5. Lot Line Adjustment
6. CIOSA EIR Vegetation Map
7. CIOSA Constraints Map for Bayview Landing
8. Site Plan with Wetland Boundaries Depicted
9. Correspondence from Wetlands Action Network dated March 10, 2003
10. Correspondence from Dr. Jan Vandersloot dated March 10, 2003
11. Correspondence from Robert A. Hamilton to Jan Vandersloot dated April 4, 2003
12. Correspondence from Robert C. Speed dated May 5, 2003
13. *Wetlands Delineation and Field Biological Evaluation* prepared by Robert 'Roy' van de Hoek dated April 6, 2003
14. Correspondence from Keane Biological Consulting dated March 21, 2003
15. Memorandum from David Bramlet to Keane Biological Consulting dated March 17, 2003
16. Letter Report prepared by Glenn Lukos Associates dated April 11, 2003 with Exhibits 3 & 4 only
17. Letter Report prepared by Glenn Lukos Associates dated April 11, 2003 (revised May 2, 2003) with Exhibits 3 & 4 only
18. Memorandum from Tony Bomkamp, Glenn Lukos Associates, to John Dixon, CCC, dated May 11, 2003
19. Memorandum from Dr. John Dixon dated May 14, 2003
20. *Hydric Soils Investigation* prepared by Fuscoe Engineering
21. Memorandum from Dr. John Dixon dated June 20, 2003
22. Wetland Determination prepared by Charles Newling dated September 8, 2003
23. Glenn Lukos Associates Memo dated September 9, 2003
24. Memorandum from Dr. John Dixon dated October 17, 2003
25. Cut/Fill Graphic prepared by C.W. Poss Inc. dated September 11, 2003
26. Memorandum from Dr. John Dixon regarding CBS dated July 8, 2003
27. Coastal Bluff Scrub Delineation
28. Landscaping Restrictions Graphic
29. Archaeological Site Locations
30. Site photographs

EXECUTIVE SUMMARY:

The subject site is a vacant 15-acre property located between the first public road and the sea (Upper Newport Bay) in the City of Newport Beach. The applicant proposes to create a public park on the upper portion of the site and a senior affordable housing project and wetland restoration area on the lower portion. Three wetland areas were originally identified on the lower portion of the site. The project as originally proposed would have resulted in the fill of wetlands to serve an unallowable purpose under the Coastal Act, residential development. The proposed project would also have required a substantial amount of landform alteration and potential impacts to coastal bluff scrub (determined to be ESHA) to accommodate the new development. As such, Commission staff recommended denial of the project.

This application was initially scheduled to be heard by the Commission at its June 11, 2003 meeting. However, on June 5, 2003, the applicants requested a postponement in order to respond to concerns raised in the staff report and to provide additional technical studies. The item was then scheduled for the Commission's July 9, 2003 hearing. The item was opened for public comment and discussion and then continued. In response to issues discussed at the July hearing, the applicant submitted a revised project description, project plans and updated technical documents in September 2003. The submittal included a wetland determination by a third party reviewer (Exhibit 22). Substantial project changes include the following: 1) building relocation to avoid Wetlands #1 and #2; 2) reduction in number of buildings from three to two; 3) reduction in the number of units from 150 to 120; 4) reduction in the amount of grading; and 5) avoidance of coastal bluff scrub. Based on the additional new information provided, the Commission's staff biologist determined that one of the three sites previously identified as wetlands was actually uplands. Due to the substantial revisions proposed by the applicants, including avoidance of all wetlands and the provision of adequate wetland buffers, the Commission staff is now recommending conditional approval of the revised project.

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends that the Commission adopt the following resolution.

A. Motion

I move that the Commission approve Coastal Development Permit No. 5-03-091 pursuant to the staff recommendation.

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

I. APPROVAL WITH CONDITIONS

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the areas to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternative that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS:

1. Submittal of Revised Project Plans

- A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of final project plans in substantial conformance with the plans received September 12, 2003. The final plans shall demonstrate the following:
- 1) Development within the two delineated wetland areas (referred to as the Settling Basin and Road Rut) and 25-foot buffer, as generally depicted in Exhibit 8, attached to the October 22, 2003 staff report for Coastal Development Permit No. 5-03-091, shall be limited to restoration/enhancement activities only. No development within the delineated wetlands and 25-foot buffer shall be allowed which is intended solely to accommodate or benefit the residential use of the site. The wetlands restoration area shall only be used to detain previously filtered runoff.
 - 2) Other than removal of non-native vegetation and planting of native vegetation, no development (except as specified in this condition) shall occur within 50 feet of coastal bluff scrub habitat or the bluff edge (as defined by Section 13577(h) of the California Code of Regulations), whichever is more restrictive. Development (including minor grading) associated with construction of the new bike path shall be limited to the outer 25 feet (furthest from the bluff edge) of the 50-foot buffer, as generally depicted in Exhibit 27 attached to the October 22, 2003 staff report. Within the buffer, non-native species shall be removed and native habitat appropriate to the location shall be restored.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Final Wetland Enhancement and Monitoring Program

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall develop, in consultation with the CA Department of Fish and Game and the U.S. Fish and Wildlife Service as appropriate, and submit for review and written approval of the Executive Director, a final detailed program designed by a qualified wetland biologist for enhancement and monitoring of the wetland sites in substantial conformance with the *Conceptual Restoration Plan for Degraded Artificial Wetlands Associated with Bayview Landing Affordable Senior Housing and Park* prepared by Glenn Lukos Associates, Inc. submitted September 12, 2003. The monitoring program shall at a minimum include the following:
1. Plans for site preparation and invasive plant removal;
 2. Restoration plan including planting design, plant palette, source of plant material, plant installation, erosion control;
 3. Final Success Criteria including target vegetation cover, target species composition, target wildlife usage and methods of monitoring;

4. Provisions for assessing the initial biological and ecological status of the “as built” enhancement site within 30 days of establishment of the site in accordance with the approved enhancement program. The assessment shall include an analysis of the attributes that will be monitored pursuant to the program, with a description of the methods for making that evaluation.
 5. Provisions for monitoring and remediation of the enhancement site in accordance with the approved final enhancement and monitoring program for a period of five years or until it has been determined that success criteria have been met or have failed to be met, whichever comes first.
 6. Provisions for submission of annual reports of monitoring results to the Executive Director for the duration of the required monitoring period, beginning the first year after submission of the “as-built” assessment. Each report shall include copies of all previous reports as appendices. Each report shall be a cumulative report that summarizes all previous reports. Each report shall also include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the wetland enhancement project in relation to the performance standards.
 7. Provisions for submission of a final monitoring report to the Executive Director at the end of the final performance monitoring period. Final performance monitoring shall take place after at least three years without remediation or maintenance other than weeding. The performance monitoring period shall either be five years or three years without maintenance or remediation, whichever is longer. The final report must be prepared in conjunction with a qualified wetlands biologist. The report must evaluate whether the enhancement site conforms to the goals, objectives, and performance standards set forth in the approved final enhancement program. The report must address all of the monitoring data collected over the monitoring period.
- B. If the final report indicates that the restoration project has been unsuccessful, in part, or in whole, based on the approved performance standards, the applicant shall submit within 90 days a revised or supplemental restoration program to compensate for those portions of the original program which did not meet the approved performance standards. The revised restoration program, if necessary, shall be processed as an amendment to this coastal development permit.
- C. The permittee shall monitor and remediate the wetland enhancement site in accordance with the approved monitoring program, including any revised restoration program approved by the Commission or its staff. Any proposed changes to the approved monitoring program shall be reported to the Executive Director. No changes to the approved monitoring program shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Conformance of Design and Construction Plans to Geotechnical Report

- A. All final design and construction plans, including foundation, grading and drainage plans, shall be consistent with all recommendations contained in the *Preliminary Geotechnical Investigation for the Newport Senior Lower Bayview Landing, City of Newport Beach, California*, prepared by NMG Geotechnical, Inc. dated December 18, 2002 and signed by T. Wright (CEG 1342) and K. Markouizos (RCE 50312); *Supplemental Geotechnical Investigation and Review of Rough Grading Plan for Proposed Bayview Senior Affordable Housing and Park Project, City of Newport Beach* prepared by NMG Geotechnical, Inc. and signed by T. Wright (CEG 1342) and K. Markouizos (RCE 50312), dated April 22, 2003 as updated on September 9, 2003.
- B. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluation approved by the California Coastal Commission for the project site.
- C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

4. Grading and Drainage Plan

- A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of final grading and drainage plans that are in substantial conformance with the revised grading plan submitted September 12, 2003 and are consistent with the following development restrictions:
- (a) No grading beyond that specified in subsection (b) of this condition shall occur within 50 feet of the coastal bluff scrub habitat or bluff edge (as defined by Section 13577(h) of the California Code of Regulations), whichever is more restrictive, as generally depicted in Exhibit 27 attached to the October 22, 2003 staff report;
 - (b) Only minor grading associated with bike path development shall occur within the outer 25 feet (furthest from bluff edge) of the 50 foot coastal bluff scrub buffer;
 - (c) Run-off from all roofs, patios, driveways and other impervious surfaces and slopes on the site shall be collected and discharged via pipe or other non-erosive conveyance to a designated outlet point to avoid ponding or erosion either on- or off- site;
 - (d) If runoff is to be directed toward the designated wetland area, filters must be incorporated to limit pollutants entering the designated wetland area;

- (e) Run-off shall not be allowed to pond adjacent to the structures;
 - (f) The functionality of the approved drainage and runoff control plan shall be maintained throughout the life of the development.
 - B. The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
- 5. Assumption-of-Risk, Waiver of Liability, and Indemnity

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from geologic instability and liquefaction; (ii) to assume the risks to the applicant and the property, that is the subject of this permit, of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards, (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from injury or damage due to such hazards.
- 6. Coastal Sage Scrub Restoration and Monitoring Program
 - A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall develop, in consultation with the CA Department of Fish and Game and the U.S. Fish and Wildlife Service as appropriate, and submit for review and written approval of the Executive Director, a final detailed habitat restoration and monitoring program for the proposed 1.5 acre Coastal Sage Scrub Restoration Project. A qualified biologist for restoration and monitoring of the coastal sage scrub restoration site shall design the restoration plan. The restoration and monitoring program shall at a minimum include the following:
 - 1. Plans for site preparation and preservation of native seed bank;
 - 2. Restoration plan including planting design, plant palette, source of plant material, plant installation, watering, erosion control, soil fertilization and weed abatement;
 - 3. Final Success Criteria including target vegetation cover, target species composition, target wildlife usage and methods of monitoring;
 - 4. Provisions assessing the initial biological and ecological status of the "as built" restoration site within 30 days of establishment of the restoration site in accordance with the approved restoration program. The assessment shall include an analysis of the attributes that will be monitored pursuant to the program, with a description of the methods for making that evaluation.
 - 6. Provisions for monitoring and remediation of the restoration site in accordance with the approved final restoration program for a period of five years.

7. Provisions for submission of annual reports of monitoring results to the Executive Director for the duration of the required monitoring period, beginning the first year after submission of the “as-built” assessment. Each report shall include copies of all previous reports as appendices. Each report shall also include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the restoration project in relation to the performance standards.
 8. Provisions for submission of a final monitoring report to the Executive Director at the end of the reporting period. Final performance monitoring shall take place after at least three years without remediation or maintenance other than weeding. The performance monitoring period shall either be five years or three years without maintenance or remediation, whichever is longer. The final report must be prepared in conjunction with a qualified biologist. The report must evaluate whether the restoration site conforms to the goals, objectives, and performance standards set forth in the approved final restoration program. The report must address all of the monitoring data collected over the five-year period.
- B. If the final report indicates that the restoration project has been unsuccessful, in part, or in whole, based on the approved performance standards, the applicant shall submit within 90 days a revised or supplemental restoration program to compensate for those portions of the original program which did not meet the approved performance standards. The revised restoration program, if necessary, shall be processed as an amendment to this coastal development permit.
 - C. The permittee shall monitor and remediate the Coastal Sage Scrub restoration site in accordance with the approved monitoring program, including any revised restoration program approved by the Commission or its staff. Any proposed changes to the approved monitoring program shall be reported to the Executive Director. No changes to the approved monitoring program shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
7. Landscape Plan
- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a final landscape plan prepared by a licensed landscape architect in consultation with the project biological consultant for the review and approval of the Executive Director. Prior to submittal to the Executive Director, the project geotechnical engineering and geologic consultants, the City of Newport Beach, the Orange County Fire Authority and the Resources Agencies shall review the plans to ensure that the plans are in conformance with the consultant’s and public agencies’ recommendations assuring public safety and the protection of endangered species. The landscape plan shall conform to the following requirements:
 1. Preparation/format of plan: The plan shall include, at a minimum, the following components:
 - (a) A summary and map showing which species of native plants are found on the site and the topography of the developed site.

- (b) A map showing the species, size, number and location of all plant materials that will be installed on the site, and all other landscape features such as proposed trails and hardscape.
 - (c) A separate list showing the species, size, number of all plant materials proposed to be installed including the common and scientific name of the plant and whether or not the plant is native to the Newport Beach plant community, the area devoted to the plant and the type of installation proposed.
 - (d) A map showing any proposed permanent and temporary irrigation.
 - (e) A schedule for installation of plants; and
 - (f) A list of goals for timing and coverage and of measures to slow surface erosion. Timing and coverage shall be based on the expected growth rate of the plants the applicant proposes to use and the typical coverage of the plant community /landscape materials that are proposed. Alternative erosion control measures shall be identified and maintained until coverage is adequate to prevent surface erosion.
2. Allowable Planting in Each Subarea
- (a) Landscaped areas within the Upper Bayview Park terrace shall be planted with native grasses as proposed in the Landscape Plan received September 12, 2003;
 - (b) The Coastal Sage Scrub Restoration Area shall be planted in accordance with Special Condition 6 of this permit;
 - (c) All landscaping planted 1) in the ground between Building 2 of the residential development and the Coastal Sage Scrub Restoration Area; 2) within 25 feet of the Coastal Sage Scrub Restoration Area; and 3) between the bike path and the northwestern property boundary, shall consist of native, drought resistant plants, as generally depicted in Exhibit 28 of the October 22, 2003 staff report for this project. Invasive, non-indigenous plant species that tend to supplant native species shall not be used. Non-native, non-invasive plants may be allowed in above-ground pots and planters surrounding the residential development;
 - (d) Landscaped areas within the interior of the residential development, between Building 2 and the bike path, and the ornamental borders may include non-invasive, non-native ornamental plants.
3. General Provisions for the Project Site
- (a) Use of pesticides, fertilizers, and irrigation shall be minimized to the maximum extent feasible. Plants shall be selected that minimize the need for fertilizer, pesticides and irrigation. These types of plants are generally native, drought tolerant plants that are adapted to local soil and climatic conditions and are resistant to pests.
 - (b) Plants shall be grouped with similar water requirements in order to reduce excess irrigation runoff and promote surface infiltration.
 - (c) If irrigation is necessary, the applicant shall install efficient irrigation systems. The irrigation system shall include, but not be limited to, the following components:
 - (1) The irrigation design will use current technology that maximizes control and efficiency of irrigation water.
 - (2) The irrigation design will use data collected from local weather stations to determine evapotranspiration and irrigation requirements.
 - (3) The sprinkler spacing, nozzle type and design will be such that maximum efficiency is achieved.

- (4) A computer program will assist the superintendent in irrigation scheduling, pump efficiency, and record keeping.
- (5) Permanent in-ground irrigation shall be prohibited within 50 feet of the coastal bluff scrub habitat.
- (6) The permittee shall not plant or allow any invasive, non-indigenous plant species, which tend to supplant native species to persist anywhere on the site. These are identified in by the California Exotic Pest Plant Council (CEPPC) on its watch list. The applicant shall remove all highly invasive plants from the site before occupancy of any structure.

B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, a final Integrated Pest Management Plan (IPM Plan), prepared by a qualified, licensed professional. The final plan shall be in substantial conformance with the following requirements:

- (1) The IPM Plan shall favor non-chemical strategies over chemical strategies for managing pests on site. Chemical strategies shall only be employed after all other strategies have been used and proven ineffective. This shall be demonstrated by providing written notice to the Executive Director of the non-chemical strategies that were used, the reasons for their ineffectiveness, and the chemical strategies that are being considered. If the IPM is inconsistent with the conditions of this permit, the permit conditions shall prevail.
- (2) This IPM program shall be designed and implemented for all of the proposed landscaping/planting on the project site and an analysis of the benefits of the selected landscaping materials on the native wildlife species that may use this vegetation. The measures that the applicant shall employ include, but are not limited to, the following:
 - (a) Introduction of native natural predators. Native, non-invasive bacteria, viruses and insect parasites shall be considered and employed as a pest management measure, where feasible.
 - (b) Weeding, hoeing and trapping manually.
 - (c) Use of non-toxic, biodegradable, alternative pest control products.
 - (d) When pesticides and/or herbicides are deemed necessary in conjunction with the IPM program, the following shall apply:
 - (i) All state and local pesticide handling, storage, and application guidelines, such as those regarding timing, amounts, method of application, storage and proper disposal, shall be strictly adhered to.
 - (ii) Pesticides containing one or more of the constituents listed as parameters causing impairment of the receiving waters for the proposed development on the California Water Resources Control Board's 1998 Clean Water Act Section 303 (d) list, or those appearing on the 2002 list shall not be employed. In addition to those products on the Section 303(d) list, products that shall not be employed include but are not limited to those containing the following constituents:

- Chem A. (group of pesticides) – aldrin, dieldrin, chlordane, endrin, heptachlor, heptachlor epoxide, hexachlorocyclohexane (including lindane), endosulfan, and toxaphene.
- DDT.

The list of pesticides and their application methods shall be included in the plans. Pesticides that are not on the list approved by the Executive Director shall not be used.

- (3) Time Limits for Landscaping. Final landscaping for all areas shall be completed prior to the occupation of the housing structures.
- (4) Areas where introduced (non-native, non-invasive) plants predominate shall achieve 90% coverage within 90 days.
- (5) All required plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan.
 - (a) Pursuant to this requirement, all landscape personnel shall be provided training and understandable manuals concerning the plant materials on the site.

C. The applicant will actively monitor the site for five years after permit issuance, remove non-natives and invasives and reinstall plants that have failed.

(1) The applicant will inspect the site no less than every 30 days during the first rainy season (November-March) the first year after the newly constructed road is open to vehicles, and no less than every 60 days during the first year. A written record of such inspection shall be prepared. Plants that failed to grow shall be replaced and invasive plants and weeds removed.

(2) Thereafter, the applicant will inspect the site at a minimum of every three months. Plants that failed to grow shall be replaced and invasive plants and weeds removed.

(3) Five years from the date of the implementation of the landscaping plan, the applicants shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

(4) If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

- D. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

8. Erosion Control Plan

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall provide to the Executive Director for review and approval, an Erosion Control Plan with plan notes and general standards for erosion control. On or before September 15 of each year of construction, the applicant shall provide to the Executive Director for review and approval, interim erosion and sediment control plans that will prevent all siltation and/or deposition of construction debris into site drainage facilities. All sediment, construction debris, and waste products should be retained on-site unless removed to an appropriate approved dumping location. The approved plans shall be subject to the following requirements and include the following components:
1. Erosion on the site shall be controlled to avoid adverse impacts to habitat areas. This shall include erosion due to on- and off-site drainage or release of water, construction activities, and the existence of roads and graded pads on the site. The applicant shall take all safe and reasonable measures to control siltation.
 2. The following temporary erosion control measures shall be used during construction activity: a combination of temporary measures (e.g., geo-fabric blankets, spray tackifiers, silt fences, fiber rolls, sand bags and gravel bags), as appropriate, during each phase of site preparation, grading and project construction. The applicant shall also provide containment methods to prevent manmade debris and/or chemicals from slope stabilization from entering drainage from the site.
 3. Following construction, erosion on the site shall be controlled to avoid adverse impacts on dedicated trails, public roadways, and park and wetland habitat areas.
 4. A copy of the Storm Water Pollution Prevention Plan (SWPPP) and any amendments thereto, prepared for compliance with the State Water Resources Control Board General Construction Activity Permit, which specifies BMPs appropriate for use during each phase of site preparation, grading and project construction, and procedures for their installation, based on soil loss calculations. The submitted calculations will account for factors such as soil conditions, hydrology (drainage flows), topography, slope gradients, vegetation cover, use of chemicals or fixatives, the type of equipment or materials proposed for use near shoreline areas and groundwater elevations.
 5. A site plan showing the location of all temporary erosion control measures. Such site plan may acknowledge that minor adjustments in the location of temporary erosion control measures may occur if necessary to protect downstream resources. Such measures shall be noted on project grading plans.

6. A plan to mobilize crews, equipment, and staging areas for BMP installation during each phase of site preparation, grading and project construction, with timing of deployment based on the forecast percentage of rainfall occurrence. The plan shall also address provisions for delivery of erosion prevention/control materials, or access to onsite supplies including unit costs and specifications for adequate storage capabilities.
7. A plan for landscaping, consistent with Special Condition No. 7 and section B below.
8. Limitations on grading activities during the rainy season, from October 15 to April 15 of each year, wherein grading may only occur in increments as determined by the City Engineer. Should grading take place during the rainy season (October 15 - April 15), sediment basins (including debris basins, desilting basins, or silt traps) shall be required on the project site prior to or concurrent with the initial grading operations, and maintained throughout the development process to control erosion, and to trap and remove manmade debris, coarse sediment and fine particulates from runoff waters leaving the site during construction activity, prior to such runoff being conveyed off site. All areas disturbed, but not completed, during the construction season, including graded pads, shall be stabilized in advance of the rainy season.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

9. Water Quality

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, a final revised Water Quality Management Plan (WQMP) for the post-construction project site. The revised WQMP shall be prepared by a licensed water quality professional and shall include project plans, hydrologic calculations, and details of the structural and non-structural Best Management Practices (BMPs) that shall be included in the project. The final WQMP shall be reviewed by the consulting engineering geologist to ensure conformance with geotechnical recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

1. Best Management Practice Specifications

- a. Site Design, Source Control, and Treatment Control BMPs shall be designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of storm water and nuisance flow leaving the developed site.
- b. Runoff shall be conveyed off site in a non-erosive manner.
- c. Energy dissipating measures shall be installed at the terminus of outflow drains, where necessary to prevent erosion.
- d. The BMPs shall be selected to address the pollutants of concern for this development, including, but not limited to, sediments, nutrients, pesticides, fertilizers, metals, petroleum hydrocarbons, trash and debris, and organic matter.

- e. Maintain, to the maximum extent feasible, pre-development peak runoff rates and average volume of runoff;
- f. All rooftop drainage shall be directed to vegetated or other permeable areas to the extent feasible where geotechnical concerns would not otherwise prohibit such use;
- g. Runoff from all new and redeveloped surfaces (e.g., roads, parking lots) shall be collected and directed through appropriate structural BMPs.
- h. Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the volume of water resulting from the amount of storm water runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor [i.e., 2 or greater], for flow-based BMPs.
- i. The structural BMPs shall be constructed prior to or concurrent with the construction of infrastructure associated with the residential development. Prior to the occupancy of the housing structures approved by this permit, the structural BMPs proposed to service those structures and associated support facilities shall be constructed and fully functional in accordance with the final WQMP approved by the Executive Director.
- j. All structural and non-structural BMPs shall be maintained in a functional condition throughout the life of the approved development to ensure the water quality special conditions are achieved. Maintenance activity shall be performed according to the specifications in the WQMP. At a minimum, maintenance shall include the following:
 - (1) All structural BMPs shall be inspected, cleaned and repaired, as needed prior to the onset of the storm season (no later than October 1st of each year) and after major storm events that may reduce the effectiveness of the structural BMPs.
 - (2) Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner.
 - (3) It is the applicant's responsibility to maintain the drainage system and the associated structures and BMPs according to manufacturer's specification and to ensure maximum pollutant removal efficiencies.
 - (4) Should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system and restoration of the eroded area. Should repairs or restoration become necessary, prior to commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work. If the Executive Director determines that an amendment or a new permit is required to authorize the work, no such work shall begin or be undertaken until it is approved in accordance with the process outlined by the Executive Director;
 - (5) Should a qualified water quality professional(s) determine that the Recommended Maintenance Procedures as proposed in the WQMP need to be revised due to site-specific data, the applicant shall submit revisions and supporting information describing the reason for the revisions for review and approval of the Executive Director.

2. Trash and recycling containers and storage areas

The applicant shall use trash and recycling containers and storage areas that, if they are to be located outside or apart from the principal housing structures, are fully enclosed and water-tight in order to prevent stormwater contact with waste matter which can be a potential source of bacteria, grease, and particulates and suspended solids in runoff, and in order to prevent dispersal by wind and water. Trash container areas must have drainage from adjoining roofs and pavement diverted around the area(s), and must be screened or walled to prevent off-site transport of trash.

3. Sweeping

The applicant shall, on a monthly basis, sweep the parking areas and driveways to remove sediment, debris, and vehicular residues. Washing-down of impervious surfaces is prohibited, unless these nuisance flows are diverted through an approved filter and do not contribute any additional pollutants to the runoff.

4. Pools, Spas, and Fountains

Pool, spa, and fountain water shall not be discharged into the storm drain system or any other receiving water. For maintenance and repair of the pool, spa, and fountain structures, BMPs shall be utilized to ensure no pollutants are discharged to receiving waters. If drainage is necessary, pool and fountain water shall only be drained into a pipe connected to the sanitary sewer system.

5. Education and Training

- a. Annual verbal and written training of employees, landscapers, BMP maintenance crews, property managers and other parties responsible for proper functioning of BMPs shall be required. Tenants shall be provided written guidance regarding how their actions can reduce the impacts of nonpoint source pollution on an annual basis.
- b. Outdoor drains shall be labeled/stenciled to indicate whether they flow to an on-site treatment device, a storm drain, or the sanitary sewer, as appropriate.
- c. Storm drain stenciling ("No Dumping, Drains to Ocean" or equivalent phrase) shall occur at all storm drain inlets in the development.
- d. Informational signs about urban runoff impacts to water quality and the BMPs used on-site shall be provided (e.g., at trail heads, at centralized locations near storm drain inlets, near the wet ponds, etc.).
- e. The applicant or responsible party shall be responsible for educating all landscapers or gardeners on the project site about the IPM program and other BMPs applicable to water quality management of landscaping and gardens. Education shall include distribution of written materials, illustrations and verbal instruction.

- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

10. Parking Management and Signage Plan

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, a parking management and signage plan. The plan shall be prepared by a qualified professional and shall include the following:
1. Parking to serve the senior housing facility at a 1.2 space per unit ratio;
 2. A minimum of 2 designated handicapped parking spaces within the senior housing parking lot to serve the public passive park. The spaces shall be available from dawn to dusk. Parking in these spaces may be limited to a maximum of 4 hours.
 3. A minimum of 8 off-site parking spaces along Back Bay Drive to serve the passive park. The fee charged shall not exceed that charged at City beach parking lots. The spaces shall be available from dawn to dusk. Parking in these spaces may be limited to a maximum of 2 hours.
 4. Signage to identify available public parking and applicable restrictions.
- B. The permittee shall undertake development in accordance with the approved final plan and schedule and other requirements. Any proposed changes to these requirements shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

11. Phasing and Identification of Public Access, Recreation Improvements and Habitat Areas

- A. The applicant shall ensure the construction of the public access and recreation improvements for park and trail purposes as described in the project description submitted by the applicant and on plans submitted on September 12, 2003 and as modified by the special conditions of this permit. All public access and recreation improvements for park and trail purposes and their signage shall be completed and the facilities shall be open for use by the general public prior to occupancy of the housing units approved by this permit. Furthermore, the facilities identified in this condition shall be maintained for the life of the proposed development.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit revised final, detailed plans of the public access and recreation improvements for park and trail purposes for review and approval by the Executive Director. All facilities constructed shall be sited and designed to minimize disturbance to adjacent habitat areas and to minimize the obstruction of public views. Plans shall identify all structures including location, dimensions, materials and colors, and use as well as sign text, size and orientation. All plans shall be of sufficient scale and detail to verify the location, size and content of all signage, and the location, size, materials and use of structures during a physical inspection of the premises. The plans shall be revised to incorporate any additional requirements of this permit. Said plans shall have received prior review and approval by the City of Newport Beach and shall reflect the City's final plans relative to the parks and trails. Development which is not specifically shown on the final plans which are reviewed and approved by the Executive Director shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required. The final plans shall also comply with the following:

1. **Public Recreational Facilities:** The final plans submitted for review and approval by the Executive Director shall include detailed public recreation and amenity improvement plans. The detailed final improvement plans submitted shall be in substantial conformance with the plans identified above and as modified by the conditions of this permit. Said plan(s) shall include trail alignment, width, and materials; designated parking; interpretive signs; designated overlooks; recreational appurtenances such as benches, lighting, refuse containers; fencing between trails and habitat buffer areas; erosion control and footpath control plantings (such as cactus adjacent to sensitive areas); steps, where necessary.
 2. **Sign Plan:** The final plans submitted for review and approval by the Executive Director shall include a detailed signage plan which directs the public to the various public access and recreation opportunities on the project site and declares the public's right to use such facilities. Signs shall invite and encourage public use of access opportunities and shall identify, provide information and direct the public to key locations. Key locations include, but are not limited to, public parking (including both parking along the street and within the parking lot), parks, trails, and overlooks. Signage shall be visible from Jamboree, Back Bay Drive and Pacific Coast Highway. Signage shall include public facility identification monuments (e.g. public park name); facility identification/directional monuments (e.g. location of park amenities); interpretive signs, and roadways signs. Signs shall also identify key habitat preservation areas, explain biology and other resource characteristics of the site, explain water quality management at the site, and identify restricted areas. Signs not explicitly permitted in this document shall require an amendment to this permit unless the Executive Director determines that no amendment is required.
 - C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
12. Open Space, Habitat, Park, and Public Access Use Restrictions
- A. No development, as defined in Section 30106 of the Coastal Act shall occur within proposed Parcel A, Upper Bayview Park, as shown in Exhibit 5 of the staff report for 5-03-091, and as described and depicted in an exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for the following development: grading (only as approved by this permit); landscaping (only as approved by this permit); construction of utilities (only as approved by this permit); public access and recreation facilities and associated appurtenances (only as approved by this permit); and habitat restoration.
- All areas of the above-identified land shall be open to the general public for recreational use except as restricted in these special conditions. Those portions of the above identified lands that are to be used for habitat restoration shall be open to entities designated to undertake habitat restoration.
- The following non-routine additional development may be allowed in the areas covered by this condition (12.A.) if approved by the Coastal Commission as an amendment to this coastal development permit or a new coastal development permit: habitat restoration; landscaping; construction and maintenance of public recreation and access facilities and appurtenances; maintenance, repair and upgrade of utilities and drains; and erosion control and repair. **PRIOR TO ISSUANCE OF THE**

COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the review and approval of the Executive Director, a list of routine maintenance and landscaping activities.

The lands identified in this restriction shall be maintained by the landowner.

- B. **PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT**, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, formal legal descriptions and graphic depictions of the portions of the subject property affected by this condition, as generally described above and shown on Exhibit 5 attached to the October 22, 2003 staff report for 5-03-091.

13. Open Space Dedication in Fee to the City of Newport Beach for Public Access and Habitat Enhancement

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, which shall dedicate to the City of Newport Beach a fee interest for public access, habitat restoration and recreational use. The area of dedication shall consist of Parcel A of Tract 95-137, as modified by the Lot Line Adjustment approved by this permit, shown on Exhibit 5 attached to the October 22, 2003 staff report for 5-03-091. The recorded document shall include legal descriptions of both the entire project site and the area of dedication. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed.

14. Area of Potential Archaeological Significance

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director an archeological monitoring plan prepared by a qualified professional, that shall incorporate the following measures and procedures:
1. If any cultural deposits are discovered during project grading or construction, including but not limited to skeletal remains and grave-related artifacts, traditional cultural sites, religious or spiritual sites, or artifacts, the permittee shall carry out significance testing of said deposits and, if cultural deposits are found to be significant, additional investigation and mitigation in accordance with this special condition including all subsections. No significance testing, investigation or mitigation shall commence until the provisions of this special condition are followed, including all relevant subsections;
 2. If any cultural deposits are discovered, including but not limited to skeletal remains and grave-related artifacts, traditional cultural sites, religious or spiritual sites, or artifacts, all grading or construction within a 50 foot wide buffer shall cease in accordance with subsection B. of this special condition;
 3. In addition to recovery and reburial, in-situ preservation and avoidance of cultural deposits shall be considered as mitigation options, to be determined in accordance with the process outlined in this condition, including all subsections;
 4. Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, Native American monitor(s) with documented ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (NAHC), and the Native American most likely descendent (MLD) or their designee when State Law mandates identification of a MLD, shall monitor all project grading;

5. The permittee shall provide sufficient archeological and Native American monitors to assure that all project grading that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times;
 6. If human remains are encountered, the permittee shall comply with applicable State and Federal laws. Procedures outlined in the monitoring plan shall not prejudice the ability to comply with applicable State and Federal laws, including but not limited to, negotiations between the landowner and the MLD regarding the manner of treatment of human remains including, but not limited to, scientific or cultural study of the remains (preferably non-destructive); selection of in-situ preservation of remains, or recovery, repatriation and reburial of remains; the time frame within which reburial or ceremonies must be conducted; or selection of attendees to reburial events or ceremonies. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Where appropriate and consistent with State and Federal laws, the treatment of remains shall be decided as a component of the process outlined in the other subsections of this condition.
 7. Prior to the commencement and/or re-commencement of any monitoring, the permittee shall notify each archeological and Native American monitor of the requirements and procedures established by this special condition, including all subsections. Furthermore, prior to the commencement and/or re-commencement of any monitoring, the permittee shall provide a copy of this special condition, the archeological monitoring plan approved by the Executive Director, and any other plans required pursuant to this condition and which have been approved by the Executive Director, to each monitor.
- B. If an area of cultural deposits, including but not limited to skeletal remains and grave-related artifacts, traditional cultural sites, religious or spiritual sites, or artifacts, is discovered during the course of the project, all construction activities in the area of the discovery that has any potential to uncover or otherwise disturb cultural deposits in the area of the discovery and all construction that may foreclose mitigation options or the ability to implement the requirements of this condition shall cease and shall not recommence except as provided in subsection C and other subsections of this special condition. In general, the area where construction activities must cease shall be no less than a 50-foot wide buffer around the cultural deposit.
- C. An applicant seeking to recommence construction following discovery of the cultural deposits shall submit a Significance Testing Plan for the review and approval of the Executive Director. The Significance Testing Plan shall identify the testing measures that will be undertaken to determine whether the cultural deposits are significant. The Significance Testing Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), and the Most Likely Descendent (MLD) when State Law mandates identification of a MLD.
- (1) If the Executive Director approves the Significance Testing Plan and determines that the Significance Testing Plan's recommended testing measures are de minimis in nature and scope, the significance testing may commence after the Executive Director informs the permittee of that determination.
 - (2) If the Executive Director approves the Significance Testing Plan but determines that the changes therein are not de minimis, significance testing may not recommence until after an amendment to this permit is approved by the Commission.
 - (3) Once the measures identified in the significance testing plan are undertaken, the permittee shall submit the results of the testing to the Executive Director for

review and approval. The results shall be accompanied by the project archeologist's recommendation as to whether the findings are significant. The project archeologist's recommendation shall be made in consultation with the Native American monitors and the MLD when State Law mandates identification of a MLD. The Executive Director shall make the determination as to whether the deposits are significant based on the information available to the Executive Director. If the deposits are found to be significant, the permittee shall prepare and submit to the Executive Director a supplementary Archeological Plan in accordance with subsection D of this condition and all other relevant subsections. If the deposits are found to be not significant, then the permittee may recommence grading in accordance with any measures outlined in the significance testing program.

- D. An applicant seeking to recommence construction following a determination by the Executive Director that the cultural deposits discovered are significant shall submit a supplementary Archaeological Plan for the review and approval of the Executive Director. The supplementary Archeological Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the Most Likely Descendent (MLD) when State Law mandates identification of a MLD, as well as others identified in subsection E of this condition. The supplementary Archeological Plan shall identify proposed investigation and mitigation measures. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. A good faith effort shall be made to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and placing cultural resource areas in open space. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of the Supplementary Archaeological Plan.
- (1) If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after the Executive Director informs the permittee of that determination.
 - (2) If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.
- E. Prior to submittal to the Executive Director, all plans required to be submitted pursuant to this special condition shall have received review and written comment by a peer review committee convened in accordance with current professional practice that shall include qualified archeologists and representatives of Native American groups with documented ancestral ties to the area. Names and qualifications of selected peer reviewers shall be submitted for review and approval by the Executive Director. The plans submitted to the Executive Director shall incorporate the recommendations of the peer review committee. Furthermore, upon completion of the peer review process, all plans shall be submitted to the California Office of Historic Preservation (OHP) and the NAHC for their review and an opportunity to comment. The plans submitted to the Executive Director shall incorporate the recommendations of the OHP and NAHC. If the OHP and/or NAHC do not respond within 30 days of their receipt of the plan, the requirement under this permit for that entities' review and comment

shall expire, unless the Executive Director extends said deadline for good cause. All plans shall be submitted for the review and approval of the Executive Director.

- a. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

15. Affordability

- A. The housing development approved by 5-03-091 shall remain affordable, as defined by Orange County Housing and Community Development Department standards, for the economic life of the development. As proposed, all of the 120 units will be affordable, with 24 units at 50% of Area Median Income (AMI) and 96 units at 60% AMI.
- B. The housing development approved by 5-03-091 shall be age restricted to those 55 years of age and older, as proposed by the applicant.
- C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

16. Future Improvements/Change in Use

This permit is only for the development described in Coastal Development Permit No. 5-03-091. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610 (a) shall not apply to the entire parcel. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance activities identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-03-091 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

17. Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Special Conditions"); and (2) imposing all Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any

part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND LOCATION

1. Project Location

The project site consists of two undeveloped parcels located at the northwest corner of Jamboree Road and Pacific Coast Highway (PCH) in the City of Newport Beach, Orange County (Exhibits 1 and 2). The site is located on the inland side of PCH, between the first public road and the sea (in this case, Upper Newport Bay). Upper Newport Bay is located to the west of the subject site, beyond the Newport Dunes Recreational Vehicle Park. The nearest vertical coastal access is available at the Newport Dunes.

The project site is surrounded by the Newport Dunes to the west, the Hyatt Newporter Hotel to the north across Back Bay Drive, the Villa Point condominiums across Jamboree to the east, and the Promontory apartments across PCH to the south, as shown in Figure 1 below. Site photographs are provided as Exhibit 30.

The site consists of an upper terrace adjacent to PCH, a vegetated hillside and a lower level pad area adjacent to Back Bay Drive. In addition, there is a steep cliff face at the westernmost extension of the property between PCH and the Newport Dunes. The cliff face is vegetated with coastal bluff scrub. The upper terrace was previously developed with a residence (1931-1947) and later a gas station (1968-1984). The lower pad area has been intermittently covered with gravel and used for temporary parking and a fruit stand. The site has also been altered in the past by road construction activities and the lower portion was used for disposal of dredged materials from Upper Newport Bay.

Nevertheless, the lower portion of the site has been found to contain two wetlands within the northern corner of the site, as depicted in Exhibit 8.



Figure 1

2. Project Description (as of September 2003)

The proposed project involves the development of a senior affordable housing project and public passive park on a vacant 15-acre site (Exhibit 3). The senior housing development and wetlands restoration area/detention basin will be constructed on the lower 5 acres of the site and the public park will be created on the upper 10 acres of the site. The project also involves a lot line adjustment to reconfigure Parcel A, which will encompass the new public park and wetland restoration/detention basin area to be dedicated to the City of Newport Beach. Parcel B will contain the housing development and will remain in private ownership.

Housing

The senior affordable housing component will consist of 120 units in two 3-story buildings with a recreation/community center, administrative offices, an outdoor pool/patio area and 146 parking spaces. Elevations and floor plans are included as Exhibit 4. The proposed structures will reach a height of 35' above finished grade. The structures will not exceed the height of the finished grade of the public park; therefore, they will not be visible from PCH. The structures will be visible from Jamboree, but view corridors toward Upper Newport Bay will be provided between the buildings.

Parking for the housing development will be provided in uncovered surface lots with 120 resident spaces and 26 employee/guest spaces. A reduced parking standard was applied based on the anticipated demand of the senior housing use. Public parking for the park site will be provided through new on-street parking along Back Bay Drive. Also, two handicapped public parking spaces will be provided within the housing site. Parking will be discussed in Section G.

All of the 120 units will be affordable, with 24 units at 50% of Area Median Income (AMI) and 96 units at 60% AMI. According to the applicants, AMI is \$70,000 based on 2002 figures provided by the County of Orange. All of the units will be age restricted with the residents being required to be 55 years and older, as specified in Special Condition 15. The facility will not provide assisted living services. Special Condition 16 addresses future use restrictions on the project site. Special Condition 17 requires the recordation of a deed restriction incorporating all of the special conditions of the permit.

Park

The upper area of the site is proposed as a primarily passive park, containing an asphalt bike path, park benches, fencing and landscaping. The park area will contain unmowed grasses and native plantings. The applicant proposes to irrigate the upper portion with a satellite-controlled system. In addition, a 1.5-acre coastal sage scrub restoration area will be established along the center sloping portion of the site. Coastal bluff scrub along the steep bluff face will remain undisturbed. Ornamental landscaping is proposed along the edges of the development area and at the intersection of Jamboree and PCH. Vegetation will be discussed in Section E.

The Water Quality Management Plan for the proposed project includes best management practices (BMPs), including two underground filtration chambers, a detention basin/ wetlands restoration area, catch basin filters, biofiltration, common area efficient irrigation and education. The proposed detention basin is sited in the northwest corner of the site, encompassing two Coastal Act defined wetland areas. In addition to using this area of the site as a detention basin, the applicant proposes to restore and enhance these wetlands. The filtration chambers are designed to capture both particulates and other pollutants prior to any water reaching the wetland area. Wetland issues will be discussed in Section B. Water quality issues will be discussed in Section F.

Grading

Approximately 38,162 cubic yards of grading (14,923 c.y. cut and 23,239 c.y. fill) is proposed for drainage, slope stabilization and site preparation. Of the 23,239 cubic yards of fill, 8,316 cubic yards will be imported. The majority of cut will occur in the upper park area, with the lower housing site receiving a substantial amount of the resulting fill material. According to the applicants' geotechnical consultant, the current grade of the lower housing site must be raised approximately 4'-5' due to soils conditions, the shallow water table and drainage concerns. The applicants assert that three project objectives necessitated the amount of proposed grading. These include removal of the former commercial pad at Jamboree and Pacific Coast Highway, fill of a previous utility road cut, and creation of a bike trail connecting the upper and lower portions of the site. Views of the Upper Newport Bay will also be improved from Pacific Coast Highway as a result of the proposed cut at the upper portion of the site. Grading and geologic hazards will be discussed in Section C. Scenic resources and landform alteration will be discussed in Section D.

Lot Line Adjustment

The project involves approval of a lot line adjustment, modifying the configuration and size of each parcel (Exhibit 5). Pursuant to the Development Agreement described in the subsequent section, the upper portion of the site is to be dedicated to the City of Newport Beach for use as a public park and the lower portion is to be used for private development (in this case, the operation of the senior housing facility) and will remain in the ownership of The Irvine Company. The parcel to be dedicated to the City (Parcel A) is currently 9.99 acres and will become 10.74 acres. Parcel A will include the proposed park site at the upper pad area, the coastal sage scrub mitigation area in the center of the site, and the wetlands restoration area in the northwest corner of the lower portion. The parcel to be developed with the residential structures (Parcel 1) is currently 4.95 acres and will become 4.2 acres. Parcel B will include the remainder of the lower portion of the site.

3. Prior Commission Action in Subject Area

On June 10, 1993, the Commission approved a development agreement between the City of Newport Beach and the Irvine Company, known as the Circulation Improvement and Open Space Agreement (CIOSA).¹ The Development Agreement affected nine sites within the Newport Beach coastal zone (the agreement affected eleven sites total within the City). The agreement provided the City with certain traffic improvements and increased open space area and the Irvine Company with certain development pre-approvals. The Bayview Landing site was included in the CIOSA.

The CIOSA outlined potential land use options for the lower portion of the Bayview Landing site, including 10,000 square feet of restaurant use, 40,000 square feet for health club use or 120 units of affordable senior housing if adequate visitor serving opportunities exist within the area. The upper portion of the site is designated for open space use. The land uses identified in the CIOSA are consistent with the designations for the site provided in the certified LUP. The currently proposed project contains land uses that are consistent with both the CIOSA and the certified LUP.

In the CIOSA EIR (1992), the Bayview Landing site was said to support "*relatively poorly developed localized sage scrub, introduced annual grassland and ruderal habitats.*" Exhibit 6

¹ Pursuant to California Government Code Section 65869, a development agreement is not valid for any development project located in an area for which a Local Coastal Program (LCP) is required but has not yet been certified unless the Commission approves such a development agreement by formal Commission action. The City of Newport Beach Land Use Plan was certified by the Commission in May 1982; however, no implementation plan has ever been submitted. Therefore, no Local Coastal Program for Newport Beach has been certified to date.

depicts on-site biological resources discussed in the EIR. The proposal for the Bayview site anticipated that the upper portion of the site would be dedicated to the City for open space/passive park use that would affect vegetation and habitat of low biological sensitivity. However, the EIR acknowledges that bluff stabilization/remediation work related to the development of open space uses and erosion control could impact some existing coastal sage scrub. In addition, the grading necessary for creation of the view park within the open space area was determined to be substantial if the City chose to modify the grade of the site to expand views of Upper Newport Bay to park users and motorists on Coast Highway. The EIR determined that grading could also impact the coastal sage scrub. As concluded in the report, *"depending in the extent and location of bluff stabilization/remediation and grading in the open space areas, these activities could cause a significant adverse impact on the California gnatcatcher and its habitat."* The report went on to say that introduced annual grassland is the dominant vegetative feature of the western half of the upper site and ruderal vegetation is found throughout the lower level portion of the lower site. No wetlands were identified at the lower Bayview Landing site in the CIOSA EIR.

The EIR identified four mitigation measures that would protect the biological resources in the open space area. First, Mitigation Measure #17 required that open space plans be prepared in consultation with a biologist who shall determine that such plans will not adversely impact sensitive resources. Second, Mitigation Measure #18 prohibited grading, stockpiling, and operation of equipment in connection with development of the lower portion of the site above the southern hillside 25-foot contour line (as shown in the Constraints Map, Exhibit 7). Mitigation Measure #24 required that coastal sage scrub or perennial native grasses be used for revegetation of graded areas. Mitigation Measure #25 restricted all non-emergency grading for bluff stabilization and remediation to the non-breeding season for the gnatcatcher.

4. Consistency with CIOSA

Though the proposed land uses are conceptually consistent with CIOSA, as previously noted, the current proposal contains components that are inconsistent with the mitigation measures cited above and with the site restrictions of the Commission approved Development Agreement. Specifically, the Development Agreement addendum included delineated "development envelopes" and defined "maximum extent of grading for non-public uses" lines, which the current proposal exceeds. In addition, Mitigation Measure #18 restricts grading above the 25-foot contour, while the current proposal includes grading beyond the 25-foot contour, as will be discussed in Sections C and D.

As explained in the Commission's findings in approving the Development Agreement, the purpose of Mitigation Measure #18 was to prevent disturbance of coastal sage scrub habitat present along the slope in the center of the Bayview Landing site. The proposed project will impact approximately 0.5 acres of coastal sage scrub (CSS). The CSS does not rise to the level of environmentally sensitive habitat area (ESHA). The applicants have stated *"the main intent of the 25' contour mentioned in Mitigation Measure #18 was to prevent a private developer from using the open space on top of the bluff for equipment activity and fill storage if and when the lower site was developed for commercial use. However, this was assuming that the upper and lower sites would be developed separately."* The applicants also contend that the CIOSA EIR was a program EIR, and supplemental environmental analysis has been carried out to evaluate impacts at a project-specific level. The City recently adopted a Mitigated Negative Declaration (MND) for the Bayview Park and Senior Housing Project. The MND concludes that coastal sage scrub replacement at a 4:1 ratio will reduce potential adverse impacts to a less than significant level.

As stated above, the Commission approved the CIOSA in June 1993, finding it to be consistent with the policies in Chapter 3 of the Coastal Act (Cal. Pub. Res. Code §§ 30200-265.5). The

Commission is not a party to the agreement between the City and the Irvine Company, and consequently is not responsible for enforcing the Development Agreement. Furthermore, the Commission's approval of the agreement does not prevent it from approving alternative proposals that do not comply with the agreement (provided that they too are consistent with the Chapter 3 policies of the Coastal Act). The Commission notes that the current proposal appears to be inconsistent with the Development Agreement approved previously. Though the standard of review for the current proposal is Chapter 3 of the Coastal Act, the Commission's approval of CIOSA provides additional guidance on how the area should be developed.

At this time, the Commission has the opportunity to evaluate proposed development at the Bayview Landing site for its consistency with the Coastal Act at a more detailed level of analysis than what occurred during its consideration of the Development Agreement. The Development Agreement provided for future discretionary review at the coastal development permit stage. The Commission's findings in approving the CIOSA Development Agreement acknowledge, *"the development areas may be further limited at the coastal development permit stage based on new/more specific biological or geotechnical information."* As such, the current staff report evaluates the proposed project in light of new information.

B. WETLANDS

Section 30108.2 of the Coastal Act states:

"Fill" means earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.

Section 30121 of the Coastal Act states:

"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

Section 30233 (a) of the Coastal Act states,

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins,*

necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

Section 30250(a) of the Coastal Act states, in pertinent part,

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

As described previously, the applicants propose to develop the subject site with a senior affordable housing project on the majority of the lower 5 acres and a public passive park on the upper 10 acres. The environmental document (Bayview MND) utilized to approve the project at the local level concluded that no wetlands exist on the subject site. However, through subsequent review, areas that constitute wetlands under the Coastal Act have been identified within two (2) areas of the lower portion of the site (Exhibit 8). The applicant proposes to restore these wetland areas as part of the proposed project. Others maintain that three (3) or four (4) wetland areas exist, and should also be restored.

One of the main reasons for preserving, expanding, and enhancing Southern California's remaining wetlands is because of their important ecological function. First and foremost, wetlands provide critical habitat, nesting sites, and foraging areas for threatened or endangered species. Wetlands also serve as migratory resting spots on the Pacific Flyway a north-south flight corridor extending from Canada to Mexico used by migratory bird species. In addition, wetlands serve as natural filtering mechanisms to help remove pollutants from storm runoff before the runoff enters into streams and rivers leading to the ocean. Further, wetlands serve as natural flood retention areas.

Another critical reason for preserving, expanding, and enhancing Southern California's remaining wetlands is because of their scarcity. As much as 75% of coastal wetlands in southern California have been lost, and, statewide up to 91% of coastal wetlands have been lost.

The Coastal Act defines wetlands as “...lands within the coastal zone which may be covered periodically or permanently with shallow water....” The more specific definition adopted by the

Commission and codified in Section 13577(b)(1) of Title 14 of the California Code of Regulations defines a wetland as, *“...land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes....”* In discussing boundary determinations, the same section of the Regulations specifies that wetlands have a “predominance” of hydrophytic cover or a “predominance” of hydric soils. Although the definition is based on inundation or shallow saturation long enough for anaerobic reducing conditions to develop within the root zone², in practice hydrology is the most difficult wetland indicator to demonstrate. In California, a predominance of hydrophytes or a predominance of hydric soils is taken as evidence that the land was “wet enough long enough” to develop wetland characteristics.

Correspondence regarding biological resources of the subject site, specifically the presence of wetlands, has been received from the Wetlands Action Network (WAN), Jan Vandersloot, Robert Hamilton and Robert Speed (Exhibits 9-12). In addition, Robert Roy Van de Hoek submitted a *Wetlands Delineation and Field Biological Evaluation* dated April 6, 2003 (Exhibit 13). The WAN letter asserts that the biological resources report prepared for the MND contains incomplete surveys of the site and did not include an evaluation of the lower 5-acre portion of the site or the upper cliff areas. As such, it asserts, the potential wetland areas of the lower portion were not recognized. The WAN letter also states that many plant species (on both the upper and lower portions of the site) were not identified in the report. Correspondence from Jan Vandersloot echoes these concerns and identifies a number of others, including inadequate coastal sage scrub mitigation, coastal landform alteration, archaeology, vernal pools at the bluff top mesa and meadow, and public parking. The biological review letter prepared by Robert Hamilton focuses on native vegetation issues, but also describes the potential wetland areas and suggests *“a proper wetland delineation be conducted...”* The letter from Robert Speed describes the site as *“the last unprotected open space on the Upper Bay estuarine margin”* and urges that the site be returned to its original condition as a *“wetland margin and natural coastal habitat.”* The Van de Hoek report finds *“three areas of definitive wetland in the 5-acre lower portion of Bayview Landing”* and discusses the hydrology, vegetation, size and dominance of each. These are shown in Exhibit 13, page 21.

Keane Biological Consulting, the biological consultant that evaluated the site for the MND, prepared a response to the WAN letter dated March 21, 2003 (Exhibit 14). The letter refutes the statement that the lower site and cliff areas were not surveyed and cites references in the report intended to describe those areas. The Keane letter states, *“the site supports no wetland soil or wetland hydrology, it is not currently associated with the wetlands of Upper Newport Bay, and it has no hydrologic source or high groundwater table to support wetlands.”* Nonetheless, the Keane letter also references a subsequent survey of the site conducted by David Bramlet, a local botanist with wetland experience. Bramlet found two “ephemeral wetlands” on the site, as described in his memo to Keane dated March 17, 2003 (Exhibit 15).

The applicants later retained Glenn Lukos Associates, biological consultants, who also evaluated the wetlands in a report dated April 11, 2003 (Exhibit 16). As stated in that report,

In the lower portion of the site, two areas were identified that exhibit the characteristics of wetlands as defined by the CCC. These areas included the settling basin and the

² As demonstrated by the definitions of hydric soils and hydrophytes: “A hydric soil is a soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part.” National technical committee for hydric soils, October 18, 1994; A hydrophyte is, “Any macrophyte that grows in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content....” Environmental Laboratory. 1987. Corps of Engineers Wetland Delineation Manual. U.S. Army Corps of Engineers, Washington, D.C.

road rut areas. Both of these features exhibit evidence of standing water or soil saturation, as well as hydric soils and a predominance of hydrophytic vegetation. The sizes of these areas are approximately 400 and 750 square feet, respectively.

The Commission's Ecologist/Wetlands Coordinator reviewed the April 11, 2003 report and noted that the delineation did not include a map showing areas having a preponderance of wetland indicator species, resulting in a potentially smaller representation of the actual wetland areas. A subsequent Glenn Lukos report dated May 2, 2003 was submitted for Commission review (Exhibit 17). In that report, the consultants provide a revised wetland map and photographs to document the topography, vegetative communities and general widths of each of the potential wetland areas. In the report, the consultants acknowledge *"an additional area was identified following the April 15 storm event, which may be defined as wetland by the CCC."* However, in subsequent correspondence (Exhibit 18), the consultants state,

In summary, it is our position that those portions of the basin that lack hydric characters in the soil and also are not able to hold water for more than seven days should not be considered a wetland. The area around the willows with redox in the soil meets the minimum test for wetlands. The upper basin lacks wetland hydrology because it is not capable of ponding water for sufficient periods, a fact that is confirmed by a complete absence of redox in the soil. The presence of opportunistic annual species is not sufficient in our opinion, given the range of conditions that all of these species can tolerate. Finally, while the road rut exhibits hydrology, hydric characteristics in the soil, and the same suite of opportunistic, highly adaptable annuals, it is not appropriate to designate it as a wetland, since it is only because of regular vehicular traffic, in an established parking lot maintained to serve an operating produce stand, that created the depression and compacted the soil.

After visiting the site on April 30, 2003 and reviewing all technical documents submitted by the applicant and others, the Commission's Ecologist/Wetlands Coordinator prepared a memorandum to district staff dated May 14, 2003 (Exhibit 19). As described in the memorandum, three areas at the Bayview site were characterized as having a preponderance of hydrophytic vegetation. These were designated as 1) Settling Basin and Swale, 2) Road Rut, and 3) Upper Depressional Area in Exhibit 3 of the May 2, 2003 Glenn Lukos report (Exhibit 17, page 17). Portions of the "Settling Basin" and "Road Rut" exhibited all three wetland parameters: hydrophytic vegetation, hydric soils, and wetland hydrology. All three include a preponderance of hydrophytic vegetation. Therefore, applying the Commission's definition of a wetland, all three sites on the Bayview Landing site were determined to be wetlands. The fourth potential wetland area required further analysis, but was later determined not to be a wetland.

A supplemental survey was conducted by Fuscoe Engineering to determine the hydric soil condition for the three "observation" sites. The results of their assessment were submitted as a *Hydric Soils Investigation* dated June 17, 2003 (Exhibit 20). The Hydric Soils Investigation concludes that the soil in the willow site (Wetland #1) meets the hydric soils definition, because the soil is frequently ponded longer than 7 days during the growing season, but concludes that the soils in the other sites (Wetlands #2 and #3) do not meet the definition of hydric soil. The Commission's staff ecologist reviewed the new information, but concluded in a memorandum dated June 20, 2003 (Exhibit 21), *"...the information in the Fuscoe Engineering report does not provide a basis for altering the conclusions presented in my memo to you of May 14, 2003."* As such, the Commission's ecologist maintained that all three areas met the Coastal Act definition of wetlands.

As explained in the May 14, 2003 memorandum, the three wetland areas do not appear to be natural features. The areas were probably created by human activities and have not developed the important resource values generally associated with natural wetlands. No sensitive species appear to be reliant upon them. Nevertheless, the staff ecologist determined that these areas qualified as wetlands by the Commission's definition and would have to be treated in accordance with the provisions of Section 30233 of the Coastal Act. Consequently, the development would have to be redesigned to avoid such impacts through wetland preservation and the establishment of buffers. In view of the relatively degraded nature of these wetlands, the Staff Ecologist concluded *"25-foot wide buffers would be amply protective if the buffers were planted with native vegetation appropriate to the area and invasive exotics removed from the wetlands and buffers."* Buffers provide essential open space between development and coastal resources, such as wetlands. Buffers, by separating development (such as the senior affordable housing) from wetlands, minimize the adverse effects of the development on the wetlands, thereby avoiding significant adverse effects to resources.

On September 12, 2003, the applicant submitted a *"Wetland Determination on the Bayview Property"* prepared by Charles J. Newling of Wetland Science Applications dated September 8, 2003 (Exhibit 22). The City contracted with Newling to conduct a "peer review" of the wetland work that had been done to date. Since Mr. Newling is a paid consultant to an interested party, this does not constitute a "peer review." However, according to the Commission's staff ecologist, Mr. Newling is an experienced delineator with first hand knowledge of the development of the Corps of Engineers 1987 Wetland Delineation Manual and, as a second professional opinion, his report is certainly of value. Newling found strong evidence of all three wetland parameters in area "A" (settling basin and swale) and area "B" (depression with road ruts). However, Newling determined areas "C" (upper depressional area) and D to be nonwetland. A report prepared by Glenn Lukos and Associates also concluded the fourth area to be upland (Exhibit 23).

The Commission's staff ecologist reviewed the analysis by Newling, as well as additional information in the record. Especially critical in the review were field observations, photographs, rainfall data and soil analyses. After careful deliberation of all of the additional data provided by the applicant and others, the staff ecologist prepared a memorandum dated October 17, 2003 (Exhibit 24). In it, the staff ecologist concludes that the Upper Depressional Area (Area C) does not meet the Coastal Act definition of a wetland after all. The Upper Depressional Area contains plant indicators of wetland conditions, but does not demonstrate clear hydric soil characteristics and did not pond as long as the areas concluded to be wetlands (Areas A and B). As stated in the memorandum, *"...the clear presence of hydric soil characteristics, particularly oxidized root channels, in the wetland areas but not at Area C or adjacent uplands within the same relatively small area, and the short duration of ponding at Area C at a time that nearby Areas A and B were inundated for long durations are convincing evidence of upland conditions at Area C. Therefore, based on the evidence that is now available, I conclude that the wetland indicator species present at Area C are not growing as hydrophytes and that Area C does not meet the wetland definitions in the Coastal Act and the California Code of Regulations."* In light of the foregoing, the Commission hereby finds that Areas A and B (also referred to as 1 and 2) are wetlands under the Coastal Act and that Areas C and D (also referred to as 3 and 4) are not.

The applicants have redesigned their project to include restoration and enhancement of the "Settling Basin and Swale" and the "Road Rut." Based on wetland determinations prepared by the applicants' consultants, each wetland area occupies approximately 0.03 acre. Plans for restoration of these areas were submitted through a *"Conceptual Restoration Plan Degraded Artificial Wetlands Associated with Bayview Landing Affordable Senior Housing and Park"*

prepared by Glenn Lukos Associates dated July 2003 [Revised August 2003]. In the new proposal, the two wetland areas would be linked and expanded to 0.41 acre from 0.06 acre. All non-native plant species would be removed and replaced with native hydrophytes appropriate to the area. In addition to providing wetland habitat restoration, the area would also be used as a detention basin to serve as a secondary water quality best management practice (BMP).

Both wetland areas would be graded and substantially altered to function as an effective restoration site and detention basin. Mechanized equipment would be utilized to enlarge and deepen the wetland areas. The Commission finds the wetland restoration plan allowable, as it serves a "restoration purpose," one of the eight allowable uses for wetlands. (Water quality will be discussed in Section F.) Although enhancement and enlargement of the wetland area is encouraged, use of the wetland as a detention basin to treat runoff from a residential development is not considered an allowable use of a wetland pursuant to Section 30233(a) of the Coastal Act. However, the water entering the detention basin/wetland restoration area would be treated through underground filtration chambers prior to discharge into the basin. As such, the primary purpose of the detention basin would not be to support the proposed residential development. The primary purpose would be restoration, an allowable use under the Coastal Act.

As stated above, Section 30233 of the Coastal Act allows the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes for eight enumerated purposes where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. In this case, the applicants propose to enhance and enlarge two existing wetland areas for restoration purposes. The boundary of these wetlands was delineated in the Glenn Lukos report of May 2003 and is attached to this staff report as Exhibit 8. The boundary includes the maximum extent of observed ponding and any adjacent areas that have a preponderance of wetland indicator species. To ensure that the project is designed and carried out to maximize protection of the existing wetlands areas, the Commission imposes Special Conditions 1 and 2.

Special Condition No. 1 requires the submittal of final plans showing no development other than restoration within the delineated wetlands or 25-foot buffer. Filtered runoff may also be directed to the newly created wetland restoration area for detention. Special Condition No. 2 requires submittal of a final wetlands enhancement and monitoring program. As conditioned, the Commission finds the project consistent with Section 30233 of the Coastal Act.

C. GEOLOGY

Section 30253 of the Coastal Act states:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The applicants propose approximately 38,162 cubic yards of grading (14,923 c.y. cut and 23,239 c.y. fill, including 8,316 c.y. import) for drainage, slope stabilization and site preparation, which is substantially less than originally proposed. The majority of the site will be subject to some form of earthwork, with the majority of cut/excavation occurring in the upper park area and

the lower housing site receiving a substantial amount of the resultant fill material. A swath in the center of the upper park area and the sloping portion of the site will remain undisturbed. Export material will be taken to the Big Canyon Country Club, located outside the coastal zone. The applicants state that grading is necessary to achieve three project objectives, including 1) removal of a former commercial pad at the corner of Jamboree and Coast Highway; 2) fill of a previous utility road cut to prevent further erosion; and 3) construction of a new bike trail connecting the upper and lower portions of the site. Although not identified as a project objective, grading of the upper area will also improve views of the Upper Newport Bay from Pacific Coast Highway. Additionally, with the proposed foundation system, a substantial amount of surcharge is necessary to mitigate the potential for liquefaction on the lower portion of the site. The lower portion of the site will be raised an average of four feet. The applicants state that the areas being grading are highly altered and are not natural landforms or bluffs.

To assess the feasibility of the project, the applicant submitted the *Preliminary Geotechnical Investigation for the Newport Senior Lower Bayview Landing* prepared by NMG Geotechnical, Inc. However, the grading plans were modified subsequent to the geotechnical consultant's review of the project. (The City Council modified the amount of grading allowed on the upper portion of the site at their February 25, 2003 hearing.) At the request of the Commission's Geologist, the applicants' consultant provided a supplemental geotechnical investigation and review of the rough grading plan for the proposed project. In addition, the consultant provided a cut/fill map to more clearly illustrate the proposed grading activities. In September 2003, the applicants revised the project design and submitted a new grading study. As such, NMG prepared a *"Geotechnical Review of Updated Grading Study Plan for Proposed Bayview Senior Affordable Housing and Park Project"* dated September 9, 2003 and an updated cut/fill map was prepared by C.W. Poss, Inc. (Exhibit 25).

The geotechnical investigations prepared by NMG conclude that the proposed project is feasible from a geologic hazard/engineering perspective. The Commission's Geologist has reviewed the updated grading plans, geotechnical investigations and supplemental slope stability analyses for the proposed development and concluded the project to be acceptable from a geologic hazard standpoint.

The NMG report includes certain recommendations for the proposed development. Among the recommendations included in report are those related to: earthwork and grading, settlement, foundation design and drainage. According to the consulting geologist, *"the updated grading study and the revised development are considered geotechnically acceptable. The prior findings and recommendations provided in the NMG 2003 report are applicable and remain valid except as updated below. The primary geotechnical impacts based on the updated grading study plan are the settlement potential at the new building locations, the stability of the adjacent natural hillside slope, and the recommended remedial earthwork as discussed below. A complete updated geotechnical grading plan review report will be provided at a future date once a final grading plan is prepared."*

In order to assure that risks are minimized, the geotechnical consultant's final recommendations must be incorporated into the design of the project. As a condition of approval (Special Condition No. 3), the applicant must submit, for the review and approval of the Executive Director, final design and construction plans signed by the geotechnical consultant indicating that the recommendations contained in the Geotechnical Investigation have been incorporated into the design of the proposed project. In addition, Special Condition No. 4 requires the submittal of final grading and drainage plans, as compliance with these recommendations is also necessary to minimize risks. These plans must demonstrate that no grading occurs within the 50-foot coastal bluff scrub buffer, except for that necessary for bike path construction in the outer 25 feet of the buffer. This will ensure that landform alteration of the coastal bluff is avoided.

Although the proposed project will be constructed with geotechnical approval, risk from development on a coastal bluff is not eliminated entirely. While the project is deemed entirely adequate at this time to protect the proposed development, future protection and repair may be required as subsurface conditions continue to change. Therefore, the standard waiver of liability condition has been attached through Special Condition No. 5. By this means, the applicants are notified that the project is being built in an area that is potentially subject to geologic instability and liquefaction that can damage the applicants' property. The applicants are also notified that the Commission is not liable for such damage as a result of approving the permit for development and are required to indemnify the Commission in the event of a lawsuit against it. Finally, the condition ensures that future owners of the property will be informed of the risks and the Commission's immunity for liability.

Therefore, as conditioned, the Commission finds that the proposed project is consistent with Section 30253 of the Coastal Act which requires that geologic risks be minimized and that geologic stability be assured.

D. SCENIC RESOURCES

Section 30251 of the Coastal Act pertains to visual resources. It states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas...

The project is located at the corner of two highly traveled coastal routes—Pacific Coast Highway and Jamboree Road. The site is also visible from the Newport Dunes Recreational Park, a popular visitor destination along the Upper Newport Bay. Because the new park and senior housing development would affect views inland (toward Newport Dunes) from PCH and from a public access point, any adverse impacts must be minimized. Consequently, it is necessary to ensure that the development be sited and designed to protect views to and along this scenic coastal area and to minimize the alteration of existing landforms.

The proposed project will require some grading within the center sloping area of the site to re-contour an historic road cut and to improve drainage. However, the entire slope will be replanted with coastal sage scrub vegetation. A naturalized water course with a rock outcropping will be incorporated within the coastal sage scrub planting area. These efforts will lessen the visual impact of the grading along the center slope.

The project also involves the creation of a view park at the upper portion of the site. Grading is proposed which will lower the elevation of the surface to improve views of the Upper Newport Bay from Pacific Coast Highway. The project will require 1 to 4 feet of cut (approx. 11,000 cubic yards) along the upper terrace. Although the views toward the Upper Newport Bay will be improved for motorists, concerns have been raised that the grading is excessive and will disturb existing native vegetation along the upper terrace. However, the applicant proposes to revegetate the terrace with coastal sage scrub. Vegetation disturbance at this site is not considered a significant adverse impact, as will be discussed in Section E. The view improvement created by grading of the upper terrace will benefit vehicular travelers and bicyclists along Pacific Coast Highway.

Therefore, the Commission finds that, as conditioned, the project is consistent with the visual resource protection policies of Section 30251 of the Coastal Act.

E. ENVIRONMENTALLY SENSITIVE HABITAT AREA (ESHA)

Section 30240 of the Coastal Act states:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The CIOSA EIR (1992) noted that the vegetation cover on the upper portion of the Bayview Landing site contained approximately 4 acres of “open, localized coastal sage scrub,” and surveys at that time found one California gnatcatcher on the site. The EIR found that grading of the park site could have a significant impact on the coastal sage scrub and gnatcatcher habitat. As described previously, the EIR discussed mitigation measures to avoid impacts to the area. These included a restriction of grading above the 25’ contour and timing of construction outside the potential gnatcatcher breeding season.

As part of the updated environmental analysis, the site was surveyed in 2001 to determine current conditions, potential impacts and appropriate mitigation measures. The survey found that the site is primarily covered by non-native vegetation and that small, non-contiguous fragments (approximately ¼ acre total) of native coastal sage scrub exist. Focused surveys found no indication that gnatcatchers inhabited the site at that time. Nonetheless, the mitigation measure included in the Mitigated Negative Declaration and approved by the City for the proposed project require that existing fragments of coastal sage scrub be replaced at a ratio of 4:1. The City has recently offered to include an additional 0.5 acres of coastal sage scrub, for a total of 1.5 acres.

As indicated above, there is a dispute as to the quantity of coastal sage scrub (CSS) at the subject site. The 1992 EIR reported 4 acres and the biological report prepared for the MND reports ¼ acre. In correspondence received March 13, 2003 (Exhibit 10), Dr. Jan Vandersloot describes the CSS at the subject site and questions what he refers to as the underreporting in the MND. Dr. Vandersloot asserts that the CSS should be considered an Environmentally Sensitive Habitat Area (ESHA) because of its habitat value for the threatened gnatcatcher. As such, his letter concludes, “No less than 4 acres of CSS should be replaced (not 1 acre as proposed by the City.)” City staff responds that the difference is attributable to differing methodologies between the biologists. As stated in the City’s “Response to Comments” included in the City Council Staff Report,

“There are two possible explanations for this discrepancy. The first is that the actual amount of CSS plants could have changed between 1992 and 2001 when the most recent survey was done. CSS plants could have either died naturally or been damaged or removed during weed abatement. Staff is not aware of any instances of illegal removal of CSS since 1992, however. Conversations with the City’s biologist suggest that a more likely explanation is a difference in characterization of the vegetation cover by the two biologists. Both surveys noted that the CSS on this site was not high quality, and is mostly sparse or poorly-developed. Given these conditions, it is likely that any two biologists would differ in their mapping of vegetation types. It appears that the first biologists drew CSS boundaries broadly while the second biologist was more precise and identified only those areas actually covered by CSS plants.

The biologist who prepared the 2001 survey, Kathy Keane, indicated that she discussed her methodology and results with a US Fish and Wildlife Service biologist who was familiar with the site and that he agreed with her approach. It should be noted that USFWS will be the entity to review and approve the City's mitigation plan under the existing NCCP agreement. Required mitigation ratios are affected by the quality of the habitat, the location relative to other habitat areas, and the likelihood of success of the revegetation plan. Ratios ranging from ½ to 1 up to 3 to 1 are typical. The final determination of the acreage of CSS revegetation will be determined in consultation with the USFWS and the Coastal Commission."

If the CSS were determined to be ESHA, development that was not dependent on the resource would be prohibited. As such, no mitigation would be necessary. The Commission's Ecologist has visited the site and determined that the coastal sage scrub does not rise to the order of ESHA. Nonetheless, the applicants are proposing to create a 1.5-acre CSS restoration area. To ensure that the applicants carry out the restoration project as proposed, the Commission imposes Special Condition No. 6, which requires submittal of a Coastal Sage Scrub Restoration and Monitoring Program.

In addition to coastal sage scrub, there is also coastal bluff scrub habitat present at the Bayview Landing site. The original biological resources report to the City does not identify this community type as being present on the site and it was not originally mapped. However, subsequent reports by Dave Bramlet, Robert Hamilton, and Roy van de Hoek do provide evidence of this habitat being present. In a memo dated July 8, 2003 (Exhibit 26), the Commission's staff ecologist describes the habitat type as follows:

"Southern coastal bluff scrub is only found at coastal sites subject to moisture laden winds with a high salt content. Soils are generally coarse-grained and poorly developed. Characteristic species include Dudleya spp., Lycium californicum, Encelia californica, Isomeris arborea, and Atriplex spp. The coastal bluff scrub on the project site is relatively diverse and occurs along the bluffs overlooking the Dunes resort area and, perhaps, along bluffs bordering Jamboree road.

This habitat type is listed in Holland's (1986) Preliminary Descriptions of the Terrestrial Natural Communities of California" as rare and is included in the current Department of Fish and Game's Natural Diversity Data Base as sufficiently rare to be considered high priority for inventory. Coastal bluff scrub is also listed as G1 S1.1 by the Nature Conservancy Heritage Program, which means that this is a "very threatened" habitat for which there are fewer than 6 viable occurrences and/or fewer than 2000 acres worldwide. The Commission has generally considered this habitat to be an Environmentally Sensitive Habitat Area (ESHA). The coastal bluff scrub on the project site, although somewhat degraded, actually has a high diversity of native species. Due to its rarity and the fact that it is easily degraded by development activities, the coastal bluff scrub at the Bayview property meets the definition of ESHA under the Coastal Act."

In response to the designation of coastal bluff scrub as ESHA by the Commission's staff ecologist, the applicant redesigned the proposed project. As shown in Exhibit 27 and as required by Special Condition No. 1, no development (including grading) is proposed within the 50' buffer area around the designated ESHA. The only exception is where the proposed bike trail encroaches to approximately 25 feet at the lower portion of the coastal bluff scrub area. The Commission's staff ecologist has determined the encroachment to be acceptable in this instance to allow a public recreational use.

The Commission adopts its staff ecologist's conclusion regarding the status of this vegetation as

ESHA. To ensure that landscaping does not adversely affect the sensitive habitat area and native revegetation efforts, the Commission imposes Special Condition No. 7. New landscaping surrounding the coastal sage scrub and coastal bluff scrub restoration sites shall consist of solely native drought-tolerant vegetation to enhance and improve the habitat value of the subject site. A minimum 25-foot transition area is necessary to improve the chances that these restoration efforts will function as intended. Non-invasive, non-native vegetation is allowed in the interior of the developed portion of the site. However, only native vegetation may be planted in-ground between Building 2 and the coastal sage scrub restoration area, as shown in Exhibit 28. Non-native, non-invasive plants may be placed in above-ground pots between the building and the restoration site. The condition allows the use of a permanent, in ground irrigation system with computer controlled satellite device with moisture sensors at the Upper Park site, the ornamental borders and the developed housing site. Temporary irrigation will be used in the CSS restoration area, but the system will remain in-ground after plant establishment. The applicants contend this is necessary to prevent vandalism of the irrigation system and to ensure continued success of the CSS restoration efforts. No irrigation will be permitted within the 50-foot coastal bluff scrub restoration area.

As conditioned for appropriate landscaping and irrigation requirements, the Commission finds the project consistent with the resource protection policies of Section 30240 of the Coastal Act.

F. WATER QUALITY

Section 30230 of the Coastal Act states, in pertinent part:

Marine resources shall be maintained, enhanced, and where feasible, restored.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 of the Coastal Act states, in pertinent part:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials.

Newport Harbor is included on the Federal Clean Water Act 303(d) list of "impaired" water bodies based on contamination by metals, pesticides and priority organics. The designation as "impaired" means the quality of the water body cannot support the beneficial uses for which the water body has been designated – in this case secondary contact recreation and aquatic uses. The listing is made by the California Regional Water Quality Control Board, Santa Ana Region (RWQCB), and the State Water Resources Control Board (SWRCB), and confirmed by the U.S. Environmental Protection Agency. Further, the RWQCB has targeted the Newport Bay watershed for increased scrutiny as a higher priority watershed under its Watershed Management Initiative. Eventually, the RWQCB will develop a total maximum daily load (TMDL) for this water body, defining the amount of each pollutant it can assimilate per day without exceeding its water quality objectives and assigning allowable contributions to each source of

such pollutants. However, until that TMDL is developed, there is no specific guidance from the RWQCB on how much this site may contribute. Consequently, projects which drain to Newport Harbor, should be designed to minimize or eliminate discharge of metals, pesticides and priority organics.

The applicant originally submitted a comprehensive Water Quality Management Plan (WQMP) for the Bayview Landing site. The Best Management Practices (BMPs) contained in the WQMP are summarized below.

BMPs

- Essentially all of the runoff from the senior housing site and the majority of the runoff from the park will drain into grated catch basins located throughout the property. All catch basins will eventually drain to the detention basin.
- Detention basin:
 - will serve as a flood control and water quality device
 - the majority of the park site and all of the senior housing site will drain to the detention basin
 - low flow runoff will percolate into sandy soil at bottom of basin
 - the basin has been engineered to capture a 10 yr intensity, 24 hr duration event. To be conservative, the basin was sized without adding any benefit of percolation into the bottom of the basin. The basin is much larger than needed to capture and filter the first ¾ inch of rainfall ("first flush")
- Catch basin filters
 - all catch basin filters which intercept runoff from parking lot paved surfaces and building roofs will contain filtration devices (Kristar Fossil Filters).
- Filtration
 - surface runoff directed to landscaped areas and swales
- Common Area Efficient Irrigation
- Common Area Runoff-Minimizing Landscape Design
 - group plants with similar water requirements in order to reduce excess irrigation runoff and promote surface filtration
 - select plants that will minimize the need for fertilizer and pesticides
 - encourage the use of native and drought tolerant plants
- Energy dissipators
- Catch basin stenciling
- Education and Training
- Activity Restrictions
 - debris disposed in appropriate receptacles; not into streets and storm drains
- Common Area Landscape Management
 - water conservation; minimal pesticide and fertilizer use
- Common Area Litter Control
- Street Sweeping monthly
- BMP Inspection/Maintenance

The revised project incorporates additional treatment BMPs compared to the previous submittal. As described by the Commission's South Coast District water quality analyst, *"The most significant change is that two stormwater filtration (trademark StormFilter) systems have also been added. One filtration system will intercept flows originating from the park site and the other system will intercept flows from the senior housing property. The systems are passive, siphon-actuated flow through storm filters, each consisting of an underground concrete vault that holds rechargeable, media filled filter cartridges designed to trap free oils and greases, metals, and fine suspended solids. (After treatment by these filtration systems, the water will*

flow to the detention basin for further treatment.)” In addition, the location and size of the detention basin, now called the “Wetlands Restoration/Detention Basin/Pond,” has changed from the previous submittal. The capacity of the basin has been increased by approximately 0.6 acre-feet or 25,000 cubic feet of storage volume. These BMPs are considered adequate to treat runoff resulting from the proposed development.

To ensure that the project is carried out in conformance with the BMPs proposed, the Commission imposes Special Conditions No. 8 and No. 9. Special Condition No. 8 requires the submittal of an Erosion Control Plan for review and approval of the Executive Director prior to the commencement of grading. Special Condition No. 9 requires the submittal of a final Water Quality Management Plan (WQMP) for review and approval of the Executive Director prior to permit issuance. The Commission finds the proposed project, as conditioned, consistent with Sections 30230, 30231 and 30232 of the Coastal Act.

G. PUBLIC ACCESS

Section 30213 of the Coastal Act states, in pertinent part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30222 of the Coastal Act states, in pertinent part:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30252 of the Coastal Act states, in pertinent part:

The location and amount of new development should maintain and enhance public access to the coast by...(4) providing adequate parking facilities or providing substitute means of serving the development with public transportation...

One of the strongest legislative mandates of the Coastal Act is the preservation of coastal access. The proposed project includes the creation of a new public park with bike trail on the upper portion of the site. The lower portion will be kept in private ownership and developed for senior housing. To ensure that the improvements on the upper portion are developed in accordance with the proposal, the Commission imposes Special Conditions 11, 12 and 13. Special Condition 11 requires all public access and recreation improvements for park and trail purposes to be completed and open for use prior to occupancy of the housing units. Special Condition 12 prohibits any development (except that associated with park and trail construction) from occurring within the upper portion of the site, as identified in Exhibit 5. Special Condition 13 requires the permittee to dedicate portions of the site to the City of Newport Beach for public access and habitat enhancement. Implementation of these conditions assures consistency with Sections 30213 and 30222 of the Coastal Act.

Section 30252 of the Coastal Act requires that new development maintain and enhance public access to the coast by providing adequate parking or alternative means of transportation. When new development does not provide adequate on-site parking and there are inadequate alternative means of reaching the area (such as public transportation), users of that development are forced to occupy public parking that could be used by visitors to the coast. A lack of public parking and public transportation will discourage visitors from coming to the beach

and other visitor-serving activities in the coastal zone. Public transportation is, indeed, inadequate in this area. A parking deficiency will therefore have an adverse impact on public access. Until adequate public transportation is provided, all private development must, as a consequence, provide adequate on-site parking to minimize adverse impacts on public access.

The applicants propose two types of land uses on-site, residential and public recreation. The residential portion of the development will be served by 146 parking spaces in uncovered surface lots with 120 resident spaces and 26 employee/guest spaces. A reduced parking standard was applied based on the anticipated demand of the senior affordable housing use. Based on past operational characteristics and actual parking demand of other senior developments, the proposed parking ratio is 1.2 spaces per unit. The developer for the senior housing component of the project, The Related Companies, has developed other senior affordable housing projects in the region and has utilized similar reductions in each. To ensure that the parking provided is sufficient to serve the proposed development, the Commission imposes Special Condition 15, which requires the units to remain affordable, as currently proposed.

The maximum number of employees on site at any time would be three during the day (one for leasing, one for management, and one for maintenance) and one during the evening. This will not be an assisted living facility. The remaining spaces would be used for guest/visitor parking. Of the remaining guest parking spaces in the surface lot, two handicapped spaces are proposed to serve the new public park. Additional public parking spaces will be provided along Back Bay Drive. City staff has indicated that the park is not considered a "destination" park; therefore, a low parking demand is anticipated. Although the site is primarily a passive park, there will be benches and a bike path traversing the site. Consequently, the public may choose to visit the site to enjoy the view or as a starting point for a bike ride. Therefore, it is important to provide sufficient parking and to inform the public of its availability. A signage plan has not been submitted. As such, the Commission imposes Special Condition No. 10, which requires submittal of a Parking Management Plan. The plan must demonstrate that a minimum of 10 parking spaces are provided to serve the public passive park, including 2 handicapped spaces on site and at least 8 spaces on Back Bay Drive.

As conditioned, the Commission finds the project consistent with Sections 30213, 30222 and 30252 of the Coastal Act.

H. CULTURAL/ARCHEOLOGICAL RESOURCES

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The project site is undeveloped and due to its favorable location along the coast, may have been the site of pre-European occupation by Native Americans. Accordingly, it is possible that archeological/cultural deposits may exist on the site such as skeletal remains and grave-related artifacts, traditional cultural sites, religious or spiritual sites, or artifacts.

According to the Mitigated Negative Declaration, previous surveys identified two potential archaeological sites on or adjacent to the proposed project: CA-ORA-1098 and CA-ORA-66 (Exhibit 29). The cultural resources investigation found only shell scatter at both of these sites, and no artifacts were seen. The CIOSA EIR states that a high potential for the future discovery of significant fossils exists and that grading operations would be expected to unearth fossils.

The proposed project would include grading within the cultural and paleontological resources areas. Excavation for creation of the view park is proposed at the site of CA-ORA-66. Surcharge and construction is proposed at the site of CA-ORA-1098. In order to minimize potential disturbance and ensure protection cultural and paleontological resources, the Commission imposes Special Condition No. 14.

Special Condition No. 14 outlines measures necessary to assure that the proposed development is undertaken consistent with Section 30244 of the Coastal Act. The condition requires that written evidence be submitted which demonstrates that the State Office of Historic Preservation has determined that no additional archeological surveys must be conducted prior to commencement of construction. During the course of grading or other construction activities cultural resources could be uncovered. Therefore, the condition requires that archaeological monitors qualified by State Office of Historic Preservation (OHP) standards and a Native American monitors appointed consistent with the standards of the Native American Heritage Commission (NAHC) be present on the site during all project grading. If cultural deposits or grave goods (as defined by OHP) are uncovered during construction, the condition requires that work stop until the archaeological monitor and the Native American monitor can evaluate the site and, if necessary, develop a treatment plan approved by OHP and the Executive Director. Upon review of the treatment plan, the Executive Director will determine whether an amendment is required. If human remains are found, the Commission could require that the applicant carry out identification and require in-situ preservation, recovery or reburial (or a combination thereof) consistent with State Law and the wishes of the Native American Most Likely Descendent. As conditioned, the Commission finds the project consistent with Section 30244 of the Coastal Act.

I. LAND USE PLAN

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. Pursuant to Section 30604(a), the permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a local coastal program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan (LUP) was effectively certified on May 19, 1982. The proposed development is consistent with the policies of the certified Land Use Plan and Chapter 3 of the Coastal Act, specifically those relating to wetlands fill and landform alteration. Therefore, the Commission finds that approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program (Implementation Plan) for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

J. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the wetland and landform alteration policies of the Coastal Act. Mitigation measures, in the form of special conditions, have been imposed to avoid or significantly lessen potential impacts to coastal resources. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.